



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R1–ES–2018–N106; FXES11140100000–189–FF01E00000]**

**Revised Draft Environmental Impact Statement; Amendment to the 1997  
Washington State Department of Natural Resources State Lands Habitat  
Conservation Plan and Incidental Take Permit**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have jointly developed with the Washington State Department of Natural Resources (WDNR) a revised draft environmental impact statement (RDEIS) addressing an amendment to the 1997 WDNR State Lands Habitat Conservation Plan (HCP) to cover the implementation of a Long-Term Conservation Strategy (LTCS) for the marbled murrelet. The RDEIS also addresses an amendment to the Endangered Species Act incidental take permit (ITP) for take of marbled murrelet resulting from the implementation of the LTCS. The RDEIS is

intended to satisfy the requirements of both the National Environmental Policy Act and the Washington State Environmental Policy Act. If approved, the proposed LTCS will replace an interim marbled murrelet conservation strategy that is currently being implemented under the WDNR HCP.

**DATES:** To ensure consideration, please send your written comments by [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

**ADDRESSES:** To view the pertinent documents for this proposal, request further information, or submit comments, please use one of the following methods, and note that your information request or comments are in reference to FWS–R1–ES–2018–N106.

- *Internet:* You can view the RDEIS on the Internet at [www.fws.gov/WWFWO/](http://www.fws.gov/WWFWO/) or at [www.dnr.wa.gov/long-term-conservation-strategy-marbled-murrelet](http://www.dnr.wa.gov/long-term-conservation-strategy-marbled-murrelet).

- *Hard Copy:* Contact one of the sources listed in **FOR FURTHER INFORMATION CONTACT** to request hard copies.

- *Email:* Comments may be submitted electronically to WDNR at [sepacenter@dnr.wa.gov](mailto:sepacenter@dnr.wa.gov). WDNR will transmit all comments received to the Service.

- *U.S. Mail:* Comments may also be submitted in writing to: Todd Welker, SEPA Center, Washington Department of Natural Resources, P.O. Box 47001, Olympia, WA 98504–7015. WDNR will transmit all comments received to the Service.

**FOR FURTHER INFORMATION CONTACT:** Please contact either of the following:

- Mark Ostwald, by telephone at 360–753–9564, by email at Mark\_Ostwald@fws.gov, or by U.S. mail at Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Dr., Suite 102, Lacey, WA 98503; or
- Todd Welker, SEPA Center, WDNR, by telephone at 360–902–2117, or by email at sepacenter@dnr.wa.gov.

You may alternatively contact either of the above individuals via the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have jointly developed with the Washington State Department of Natural Resources (WDNR) a revised draft environmental impact statement (RDEIS) addressing an amendment to the 1997 WDNR State Lands Habitat Conservation Plan (HCP) to cover the implementation of a Long-Term Conservation Strategy (LTCS) for the marbled murrelet. The RDEIS also addresses an amendment to the Endangered Species Act section 10 incidental take permit (ITP) for take of marbled murrelet resulting from the implementation of the LTCS. The RDEIS is intended to satisfy the requirements of both the National Environmental Policy Act and the Washington State Environmental Policy Act. If approved, the proposed LTCS will replace an interim conservation strategy for the marbled murrelet, which is currently being implemented under the WDNR HCP.

The Service and WDNR have jointly developed a RDEIS for the purpose of analyzing alternatives for the LTCS for the marbled murrelet. The RDEIS analyses seven action alternatives and a no action alternative. If approved, the amended ITP would authorize incidental take of the marbled murrelet that would occur as a result of

implementation of the LTCS over the remaining 50-year term of the WDNR HCP. The scope of the proposed amendment to the WDNR HCP and ITP, and thus of the RDEIS, is exclusively limited to consideration of the LTCS for the marbled murrelet.

In addition to this notice, the U.S. Environmental Protection Agency (EPA) is also publishing a notice announcing the availability of the RDEIS, as required under section 309 of the Clean Air Act (42 U.S.C. 7401 *et seq.*). The publication of EPA's notice is the official start of the public comment period for the RDEIS (see **EPA's Role in the EIS Process**).

## **Background**

The marbled murrelet (*Brachyramphus marmoratus*), a seabird, was listed as threatened in 1992 under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). In 1996, the WDNR released their draft HCP for forest management activities covering 1.6 million acres of forested State trust lands within the range of the northern spotted owl (*Strix occidentalis caurina*) in Washington. A draft EIS dated March 1996 was jointly developed by the Service, National Marine Fisheries Service, and the WDNR to address the issuance of ITPs for the HCP, and was announced in the *Federal Register* on April 5, 1996 (61 FR 15297). The 1996 draft EIS analyzed reasonable alternatives, including the HCP, for forest management activities on forested State trust lands that would be covered by the ITPs. A notice of availability for the final EIS (FEIS) was published in the *Federal Register* on November 1, 1996 (61 FR 56563). On January 30, 1997, the Service issued an ITP (Permit No. 812521) for the WDNR HCP covering multiple species. The Service's ITP decision and the availability of related

decision documents were announced in the *Federal Register* on February 27, 1997 (62 FR 8980).

The WDNR HCP (see [www.dnr.wa.gov/programs-and-services/forest-resources/habitat-conservation-state-trust-lands](http://www.dnr.wa.gov/programs-and-services/forest-resources/habitat-conservation-state-trust-lands)) commits the WDNR to developing a LTCS for the marbled murrelet (HCP IV. 39). At the time the HCP was prepared, it was determined that development of a LTCS was not possible due to a lack of scientific information. For this reason, the WDNR developed an interim conservation strategy for the marbled murrelet, which is currently being implemented. The proposed amendment to the WDNR HCP is the final step in the process for development of the LTCS.

Briefly, the interim conservation strategy for the marbled murrelet includes the following components:

- (1) Identification of blocks of suitable marbled murrelet habitat on which timber harvest would be deferred;
- (2) Implementation of a habitat relationship study using marbled murrelet occupancy surveys to determine the relative importance of forested habitats;
- (3) Based on the findings of the habitat relationship study, identification of the lowest quality habitat blocks to be made available for timber harvest (these areas were expected to contain about 5 percent of the marbled murrelet-occupied sites on HCP-covered lands);
- (4) Implementation of surveys of higher quality habitat blocks identified by the habitat relationship study to determine marbled murrelet occupancy, and protection of murrelet-occupied habitats, along with some unoccupied habitat; and
- (5) Development of a LTCS for the marbled murrelet on WDNR lands.

A *Federal Register* notice of availability (81 FR 89135) for a draft environmental impact statement (DEIS) for the LTCS was published for a 90-day comment period on December 9, 2016. The 2016 DEIS did not specify a preferred alternative. The public comment period for the 2016 DEIS was 90 days, and over 5,000 comments were received. In 2017, the WDNR selected a preferred alternative with guidance from the Washington Board of Natural Resources, necessitating development of an RDEIS. This alternative was submitted in an application to the Service requesting a permit amendment in July 2018.

This RDEIS differs from the 2016 DEIS in the following ways: (1) The WDNR has developed and selected a preferred WDNR alternative (alternative H), which was not previously identified; (2) a new alternative (alternative G) has been included in response to specific public comments; (3) the WDNR forest estate model, or large data overlay model, has been rerun with WDNR-identified corrections, resulting in different acreage outputs for all the alternatives; (4) the WDNR and the Service have identified separate purpose and needs statements in Chapter 1; and (5) the marbled murrelet population viability analysis has been rerun with modifications.

### **Endangered Species Act Compliance**

Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term “harm,” as defined in our regulations, includes significant habitat modification or degradation that

results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in our regulations as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include but are not limited to breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that authorize take of federally listed species, provided the take is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- (1) The taking will be incidental;
- (2) The applicant will prepare a conservation plan that, to the maximum extent practicable, identifies the steps the applicant will take to minimize and mitigate the impact of such taking;
- (3) The applicant will ensure that adequate funding for the plan will be provided;
- (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- (5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan.

## **National Environmental Policy Act Compliance**

The proposed amendment of the ITP and the 1997 WDNR HCP to cover the LTCS for the marble murrelet is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq.*). We and WDNR have jointly developed the RDEIS for the purpose of analyzing the environmental impacts of different alternatives for the LTCS under the HCP and ITP. The RDEIS analyzes the DNR's preferred alternative, six additional alternatives, and a no-action alternative, for a total of eight alternatives.

WDNR manages approximately 1.38 million acres within 55 miles of marine waters, which is the known inland limit of the nesting range for the marbled murrelet. The RDEIS analyzes Alternative H as DNR's preferred alternative. The Service is not presently identifying a preferred alternative, but will for the final environmental impact statement (FEIS). The no-action alternative involves continuation of the interim conservation strategy for the marbled murrelet under the WDNR HCP. The alternatives in the RDEIS are restricted to implementation within this area.

The alternatives represent a range of approaches to long-term marbled murrelet habitat conservation on WDNR lands. The alternatives differ in the amount and location of WDNR-managed forest land designated for long-term conservation of the murrelet. Alternatives also include a variety of conservation measures proposed to protect marbled murrelet habitat. The alternatives also differ in the amount and quality of marbled murrelet habitat removed through timber harvest.

### **EPA's Role in the EIS Process**

The EPA is charged under section 309 of the Clean Air Act to review all Federal agencies' EISs and to comment on the adequacy and the acceptability of the



environmental impacts of proposed actions in the EISs. EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the *Federal Register*. The EIS database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability on Fridays in the *Federal Register*. For more information, see <https://www.epa.gov/nepa>. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

### **Public Meetings**

We will hold four public meetings during the public comment period, at the following locations in the State of Washington: Ballard, Burlington, Cathlamet, and Forks. The dates, times, and specific locations of the meetings will be posted on the internet at <https://www.dnr.wa.gov/mmltcs>. The public meetings will be physically accessible to people with disabilities. Please direct requests for reasonable accommodations (e.g., auxiliary aids or sign language interpretation) to one of the sources listed in **FOR FURTHER INFORMATION CONTACT**, at least 7 working days prior to the date of the meeting you wish to attend.

### **Public Comments**

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We will also accept written comments at four public meetings, to be announced. We specifically request information on the following:

1. Biological information on the marbled murrelet in the terrestrial and marine environments;
2. Cumulative effects on the environment that might influence the status of the marbled murrelet in the ESA listed range;
3. Resiliency of the alternatives in providing current and future marbled murrelet habitat in relation to climate change and future natural disturbance events such as fire and windstorms;
4. Adequacy of the distribution of marbled murrelet habitat within the HCP covered area to provide for murrelet conservation over the remaining term of the HCP;
5. Other aspects of the human environment not already identified in the DEIS that may be affected, pursuant to NEPA regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6.

Comments received from the 2016 DEIS public comment period were used to inform the RDEIS. Comments received on the DEIS and this RDEIS will be responded to in the FEIS. If you submitted comments during the comment period for the DEIS, you do not need to resubmit those comments.

### **Public Availability of Comments**

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your

personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation we use in preparing the FEIS, will be available for public inspection by appointment, during normal business hours, at our Washington Fish and Wildlife Office (see **ADDRESSES**).

### **Next Steps**

The HCP amendment for the LTCS is intended to replace the interim conservation strategy for the marbled murrelet. We will evaluate that request, associated documents, and public comments in reaching a final decision on whether the application for a permit amendment meets the requirements of section 10 of the ESA. We will prepare responses to public comments and publish a notice of availability for the FEIS. The FEIS will identify the WDNR preferred alternative for the amendment, and also the Service's preferred alternative. We will also evaluate whether the proposed permit action would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to approve the proposed amendment of the WDNR HCP and ITP. If the ESA section 10 issuance requirements are met, we will approve the amendment of the ITP and HCP. We will issue a record of decision and approve or deny the ITP and HCP amendment request by WDNR no sooner than 30 days after publication of the notice of availability of the FEIS.

**Authority**

We provide this notice in accordance with the requirements of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

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**Theresa E. Rabot,**  
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